

605 KAR 1:130. Procedures.

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.058(11) authorizes the Motor Vehicle Commission to promulgate administrative regulations. This administrative regulation establishes the procedure and practice for the Motor Vehicle Commission.

Section 1. Hearings. Hearings shall be conducted as established in this administrative regulation and KRS Chapter 13B.

(1) During any hearing, the reason for any objection shall be stated and made a part of the stenographic record.

(2) All testimony shall be transcribed.

Section 2. Appearances. A licensee who is a natural person may appear and be heard in person, or with or by a duly appointed attorney, and may produce under oath evidence relative and material to matters before the commission.

(1) A licensee that is an artificial entity shall be represented only by a general partner, managing member, president; or equivalent officer; or by an attorney licensed or authorized to practice in Kentucky.

(2) Any attorney, in a representative capacity, appearing before the commission may be required to demonstrate the authority to act in a representative capacity.

Section 3. Argument. All oral arguments shall be succinct and concise. The hearing officer may curtail or establish time limits for oral arguments.

Section 4. Additional Hearings. (1) The commission may, on its own motion, prior to its determination, require an additional hearing, if an additional hearing is in the interests of justice.

(2) Notice to all interested parties establishing the date of the hearing shall be given in writing by the executive director.

Section 5. Briefs. Briefs may be filed as a matter of right.

(1) All briefs shall be concise, summarizing first the evidence presented at the hearing.

(2) Copies of briefs shall be typewritten or typed and printed and filed in quadruplicate.

(3) The time allowed for filing briefs shall be designated by the hearing officer, but shall not be less than five (5) days after the hearing.

(4)(a) Response briefs may be filed by the commission, or filed by any person whose interests are affected.

(b) Reply briefs may be filed only if limited strictly to answering the brief of respondent.

(5) Briefs containing more than ten (10) pages shall contain on the top fly leaves a subject index with page references.

Section 6. Continuances. Continuances shall be granted if a continuance is in the interest of justice and if requested at least forty-eight (48) hours in advance of the hearing date.

Section 7. Depositions. The hearing officer may order testimony to be taken by deposition at any stage of the hearing.

(1) Depositions shall be taken before any person having power to administer oaths, or written by the person taking the deposition or under his direction and shall then be subscribed by

the deponent and certified in the usual manner by the person taking the deposition.

(2) The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 8. Except as otherwise provided in this administrative regulation, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission, unless the hearing officer relaxes rules if the ends of justice will be better served by so doing.

(1) Judicial notice.

(a) If called to the attention of the hearing officer, "judicial notice" may be taken of any matter situated in the files of the commission, the Revenue Cabinet or the Transportation Cabinet, any action pending that involves the commission or and all other matters of which a court of Kentucky may take judicial notice.

(b) A brief statement recognizing the matter shall be made in the transcript by the hearing officer.

(2) Additional evidence.

(a) Upon application to the commission, prior to the decision of the commission in the case, the hearing may be reopened for the presentation of additional evidence.

(b) Application for and additional hearing shall establish concisely the nature of this additional evidence. The commission may, on its own motion, require an additional hearing.

Section 9. Ex Parte Contacts. A person shall not have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. A person in violation of this Section shall be identified on the record to the commission and any information provided through the ex parte contact shall be stricken from the commission's records and disregarded.

Section 10. Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission.

Section 11. Reconsideration Hearings. Any party to the proceeding may request in writing a hearing for purposes of reconsideration of a commission decision of any matter formally heard by the commission.

(1) The request shall be filed with the executive director within fifteen (15) days from the date the notice of the commission's decision is mailed.

(2) A reconsideration hearing shall be granted only if the request presents significant, relevant information not previously available for consideration, or demonstrates that there have been significant changes in the factors or circumstances relied upon by the commission in reaching its decision, or demonstrates that the commission has materially failed to follow its adopted procedures in reaching its decision.

(3) The commission shall consider requests for reconsideration in a summary manner.

(4) If a hearing for reconsideration is granted by the commission, it shall be conducted in accordance with the requirements of this administrative regulation.

(5) The reconsideration hearing shall be held within thirty (30) days of the decision to grant the request for reconsideration.

Section 12. Notices. (1) Upon the filing of an appeal from an order or decision, the appellant shall serve a copy on all interested parties.

(2) All other hearings except license suspension or revocation hearings shall be held only

after notice given at least ten (10) days before the date of the hearing.

(3) A notice of a license suspension or revocation hearing by registered mail to the licensee, sent to the business address of the licensee shown on the latest application for a license shall be sufficient notice.

Section 13. Specifications as to Pleadings, Complaints, Briefs, Motions, Etc. Except if permission is granted by the hearing officer, all papers pursuant to this administrative regulation shall be typewritten or printed.

(1) All copies shall be clearly legible and double spaced, except for quotations.

(2) All motions, complaints, briefs, etc., shall be made on unglazed paper eight and one-half (8 1/2) inches wide and eleven (11) inches long.

Section 14. Subpoenas and Subpoena Duces Tecum. (1) The party desiring a subpoena shall make application at least five (5) days before the hearing date with the executive director of the commission.

(2) The application shall be in writing, and shall state the name and address of each witness required.

(3) If evidence other than oral testimony is required, such as documents or written data, the application shall establish the specific matter to be produced and sufficient facts to indicate that such matter is reasonably necessary to establish the cause of action or defense of the applicant.

Section 15. Costs of Hearing. (1) If the commission, by issuance of a final order, finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer.

(2) If the hearing officer or the commission finds that the hearing has been held as a result of an allegation or charge lacking substantial merit, or if the hearing officer or commission finds that a party to the hearing has materially delayed or increased the cost of the hearing through its actions, the commission shall assess to the party bringing the allegation or causing the delay, the fee charged to the commission for transcription of the record and the fee charged by the hearing officer.

(3) The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission. (9 Ky.R. 652; eff. 12-1-1982; Recodified from 601 KAR 21:130, 7-13-1984; 18 Ky.R. 471; eff. 10-1-1991; 19 Ky.R. 2313; eff. 5-26-1993; 40 Ky.R. 670; 1256; eff. 1-3-2014.)